

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

*All Cases*

**MDL No. 2804  
Case No. 17-MD-2804  
Judge Dan Aaron Polster**

**MEMORANDUM OF LAW IN SUPPORT OF THE KROGER DEFENDANTS'  
MOTION SEEKING LEAVE TO FILE UNDER SEAL CONFIDENTIAL DOCUMENTS  
AS EXHIBITS IN SUPPORT OF THEIR OBJECTION TO THE ORDER REGARDING  
FRANCES TUCKER'S DEPOSITION**

**I. PROCEDURAL HISTORY AND STATEMENT OF FACTS**

On June 6, 2023, Plaintiffs unilaterally noticed the deposition of Frances Tucker, who is the Senior In-House Counsel for Kroger. On July 5, 2023, Kroger filed a Motion for Protective Order objecting to Plaintiffs' improper notice of the deposition of Attorney Tucker. On August 8, 2023, Special Master Cohen issued an Order denying Kroger's Motion for Protective Order. (Doc. 5176.)

Kroger objects to the Special Master's ruling and in support of the Objection to be filed with the Court, cites to and attaches a number of discovery documents to the Objection as Exhibits, some of which have been designated as confidential pursuant to the Case Management Order No. 2: Stipulated Protective Order dated May 15, 2018. (*See* Doc. 441.) Defendants, The Kroger Co., Kroger Limited Partnership I, and Kroger Limited Partnership II (collectively, "Kroger") file this Motion pursuant to Local Rule 5.2 and the Stipulated Protective Order, seeking to file under seal confidential documents as Exhibits in support of Kroger's Objection to the Order regarding Frances Tucker's deposition.

## **II. ARGUMENT**

Kroger requests leave from the Court under Local Rule 5.2 to file the following seven (7) confidential discovery material/documents under seal:

- a. Deposition Transcript of the April 25, 2023 deposition of Nicholas Gonzales, Kroger's Health & Wellness Compliance Officer (2016-Present)
- b. Kroger's privilege log designated as Kroger-MDL071 Privilege Log
- c. 2014 Pharmacy Conference Notes
- d. Kroger's Pharmacy Compliance Committee Charter
- e. Kroger Buzzeo CSA
- f. Kroger-MDL00058810
- g. Kroger's Policy 501: Pharmacy Controlled Substance Policy and Procedure

Local Rule 5.2 provides for the filing of documents under seal pursuant to a prior court order that authorizes the filing of sealed documents. Local Rule 5.2. It is necessary to file the documents listed above as supporting Exhibits to the Objection under seal because they are subject to the 5/15/18 Stipulated Protective Order. Further, the filing of this Motion for Leave and filing these documents under seal are authorized by and contemplated by the parties under the 5/15/18 Stipulated Protective Order. (*See* Doc. 441, ¶¶ 62-63.)

## **III. CONCLUSION**

The Kroger defendants respectfully request that this Honorable Court enter the proposed Order, granting Kroger leave to file under seal confidential documents as Exhibits in support of Kroger's Objection to the Order regarding Frances Tucker's deposition.

Dated: August 21, 2023

Respectfully submitted,

**The Kroger Co., Kroger Limited  
Partnership I, and Kroger Limited  
Partnership II,**

**By Counsel,**

/s Ronda L. Harvey

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on August 21, 2023, a true and correct copy of the foregoing Memorandum of Law in Support of Kroger Defendants' Motion for Leave under Local Rule 5.2 to file under seal confidential documents as Exhibits in support of Kroger's Objection to the Order regarding Frances Tucker's deposition, was filed with the Clerk of the Court by using the CM/ECF system, copies of which will be served on counsel of record by the Court's CM/ECF system.

*s/ Ronda L. Harvey*

Ronda L. Harvey (WVSB #6326)